S.B.CRIMINAL REVISION PETITION NO.1157/2006
(Prakash Vs. State)

Date of order : 26.02.2007

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Vikram Choudhary, for the petitioner.
Mr. JPS Choudhary, Public Prosecutor.

Heard learned counsel for the petitioner as well as learned Public Prosecutor and gone through the order impugned.

It is contended by the learned counsel for the petitioner that after recording of the evidence of prosecution as well as defence, the case was listed for final hearing. At that stage, an application was moved on behalf of prosecution for recalling witness – Madho Singh, S.I., P.S. Kotwali for exhibiting the FSL report. It was contended in the application that FSL report was not got exhibited because the same was received after filing challan and the FSL report was submitted before the Court under Section 293 Cr.P.C. In the said application, another prayer was made for recalling witness – Sajjan Singh, Maalkhana Incharge, P.S. Kotwali. The trial court ordered for recalling Sajjan Singh for the purpose of exhibiting FSL report vide order impugned dated 2.11.2006. It is contended by the learned counsel for the petitioner that the

aforesaid application has been moved only to produce another evidence on record which was not earlier produced before the Court, therefore, recalling of witnesses – Sajjan Singh, Maalkhana Incharge, P.S. Kotwali for the purpose of exhibiting FSL report is absolutely illegal. Further, it is contended that only the Investigating Officer can be recalled upon application filed by the prosecution under Section 311 Cr.P.C.

Learned Public Prosecutor contended that another witness can also be recalled at any stage for the purpose of recording the evidence, if necessary.

I have perused the application submitted before the trial court. The only purpose of filing the aforesaid application is to exhibit the FSL report and obviously it can be exhibited by Investigating Officer. Accordingly, in the interest of justice, the order impugned dated 02.11.2006 is modified and the trial court is directed to recall the prosecution witness – Madho Singh, S.I. for the purpose of exhibiting FSL report.

With the aforesaid modification, the revision petition is disposed of.

(GOPAL KRISHAN VYAS) J.

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